

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SEAN PATRICK BALL,)
Petitioner,) Civil Action No. 19-76
v.) Judge Cathy Bissoon
PENNSYLVANIA DEPARTMENT) Magistrate Judge Patricia L. Dodge
OF CORRECTIONS, *et al.*,)
Respondents.)

MEMORANDUM ORDER

This case has been referred to United States Magistrate Judge Patricia L. Dodge for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72.

On August 27, 2019, the Magistrate Judge issued a Report, (“R&R,” Doc. 20), recommending that Sean Ball’s (“Petitioner’s”) petition for a writ of habeas corpus under 28 U.S.C. § 2254,¹ (Doc. 1), be dismissed without prejudice, and that a certificate of appealability be denied. The R&R concluded that Petitioner failed to exhaust his state court remedies as required by statute—and is in fact actively litigating the issues presented in his Petition in Pennsylvania’s Commonwealth Court—prior to initiating the instant action.² Service of the R&R was made, and but no Objections were filed.

¹ As noted by the Magistrate Judge, though Petitioner used the standard forms for petitions filed pursuant to 28 U.S.C. § 2241, the Petition is properly construed as being filed under 28 U.S.C. § 2254, as Petitioner is in custody pursuant to a state court judgment.

² As of the date of this Memorandum Order, Petitioner’s case in the Commonwealth Court remains open.

After a review of the pleadings and documents in the case, together with the R&R, it hereby is **ORDERED** that Sean Patrick Ball's habeas petition, (Doc. 1), is **DISMISSED WITHOUT PREJUDICE**; a certificate of appealability is **DENIED**; and the Report and Recommendation, (Doc. 20), is **ADOPTED** as the Opinion of the District Court.

IT IS SO ORDERED.

February 12, 2020

s\Cathy Bissoon

Cathy Bissoon

United States District Judge

cc (via Electronic Filing):

Counsel of Record

cc (via U.S. Mail):

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